

## A Critical Analysis Of Scope Of Bail Under POCSO Act

Parvinder<sup>1\*</sup>, Dr. Ramveer Singh<sup>2</sup>

<sup>1\*</sup>Research Scholar, MVN University, Palwal, Email id: -20sl9007@mvn.edu.in

<sup>2</sup>Associate Professor, MVN University, Palwal, Email id: - ramveer.singh@mvn.edu.in

**Citation:** Parvinder, Dr. Ramveer Singh,(2024), A Critical Analysis Of Scope Of Bail Under POCSO Act, *Educational Administration: Theory and Practice*, 30(5), 13227 - 13231

Doi: 10.53555/kuey.v30i5.5728

### ARTICLE INFO

### ABSTRACT

As the world is regressing speedily, sexual abuse and minor rapes against human is increasing too. The scope of sexual abuses in the present scenario is not only limited and prevented to adult irrespective of their age or gender but it has extended to minor child who are under the age of 18 years. Despite the reality that sexual abuses and rapes against children is considered as a crime under the IPC so far the laws were inadequate in perceiving and rebuffing other sexual crimes, as a result "POCSO (Protection of Children from Sexual Offences) Act" was enacted in 2012.

In POCSO cases as per section 5 & 6, which pertains to aggravated penetrative sexual assaults, the scope of granting bail are normally low, in particular if the investigations are ongoing and there are no evidences favoring the accused. The court would concern different variables, like the cruelty of the crime, age of victim, the evidences obtainable, the possibilities of the accused tampering with the evidences or affecting the witness and the probability of the accused abscond if free on bail.

It is gender impartial but still there have been some drawbacks which have been unseen for relatively some time which is why the new amendments of POCSO are essential. The Ordinance revised S.376 of IPC and altered S.42 of the POCSO Act. In addition, this research have tried to examine the origin and change in event after the execution of the POCSO Act.

This study also tried to examine the scope and impact of the POCSO Act on Indian Society valuable suggestions for rectifying the same. The study also aimed to focus the provisions of granting bail under POCSO Act. The administrative pitfalls, drawbacks in Judiciary and delivery of Justice also critically analyzed. For this we require to study whether the criminal laws of India is sufficient to manage the cases of sexual offence and rapes against minors even after a self-governing Act such as POCSO Act, 2012. The implication of the findings and discussions for future research, as well as, recommendations for uniform efficacious execution strategies and analyze certain disputed provisions of the aforementioned laws, shape the central part of this study.

**Keywords:** Bail, Sexual Offence, Rape, Minors, POCSO Act

### INTRODUCTION

The major common stigmas attached to a civilization is that violence and abuses against children. Children can be mistreated physically or emotionally. The types of child abuses such as injuries, abandon or negligent treatments, blame, sexual abuse, child labor and forced begging. Abuses against children can occur in home, school, orphanage, on the streets, in the workplace and in prison. Violence in any type has significant effects on the overall growth of the children. Child abuses result in real or potential damage to the wellbeing of children, survival, expansion and self-respect. Child abuses and neglect is a raising communal issue. <sup>1</sup>

As per NCRB, 109 children in India confront some type of sexual abuses against children daily. The same record shows a sharp increase in offences against children on every year. Contrasting other offences, terrible offences against child are always reported low. This is mainly for the reason that although the children

<sup>1</sup> Debarati Halder, "Child Sexual Abuse and Protection Laws in India", (Sage Publication, 2018)

confide in someone, the facts are always included under the fear of family status and communal stigma. Child abuses are an infringement of the fundamental human rights of children.

As per WHO research reveals that CSA as the participation of children in sexual activities that they don't entirely understand, are incapable to give informed permission to, or for which the child is not arranged for developmentally and can't provide permission, or that violate the law of the land. The definitions of CSA comprises sexual abuse such as fondling, asking a child to touch or be touched sexually, intercourses, comprising children in prostitution or pornography, or child lure on cyberspaces<sup>2</sup>.

Sexual harassment against children is a multilayered issue which adversely effects child's physical security, psychological wellbeing and behavioral aspects. As per 2018 report, around 110 children were seen to be sexually harassed daily. As per NORB survey, there was a jump of 22 per cent from 2017, and the highlight of pornography in India has increased even more in the lockdown. There is 95% spine in traffic to adult sites during the 3-week lockdown. There is an increase of 20% in consuming porn contents from even before. Child abuses and harassment is hurt to, or abandon of, children by another persons, whether adults or children. Sexual harassment might reason severe injuries to the children and might even results in death. An issue that is only starting to get light in India rape, sexual abuses is global problems of gender aggression.

POCSO Act work at protecting the children's interest at all stages of the legal processes by inculcate child friendly mechanism for every purpose comprising reporting, recording of evidences and investigations. POCSO act make provision for medical examination in presence of the parent or any other person whom the child trusts and of female children by female doctors.<sup>3</sup> After the POCSO was sanctioned, sexual crimes against minors were included in three sections of the IPC: Rape in S.376, outraging modesty of women in S. 354 and unnatural sexual activities in S. 377.

Bails as per POCSO Act crime has to be concerned under Section 439 CrPC and as per the settled factors of permission of bail which comprise nature and seriousness of the crimes, and the probability of accused persons have committed the crime. The chance of the accused reoffending, affecting witness and tamper with evidences or being flight risks are also key drivers to be concerned while deciding bail applications.<sup>4</sup>

Bail would not be allowed to accused persons booked as per POCSO Act merely on the ground that the time limitation imposed in recording evidences of the children and carried out the trial proceedings wasn't viewed. Analyzing the case Hanumantha Mogaveera vs State of Karnataka<sup>5</sup> managed the reason behind imposing the time limitations in the POCSO Act.

### RESEARCH METHODOLOGY

For the purpose of this research paper, we purposed to adopt doctrinal research paper methodology. The work is carried out by devising necessary and appropriate research tool to collect data from various law sources, for example various book, articles, reports, case laws, journals and website have been referred for the same purpose.

Asha B. (2017)<sup>6</sup> proposes that abuses against children are usual and remain an unlucky reality for millions of children from every societal and economic community. A child in India faces early marriage, sexual harassment, child labor, child trafficking, online pornography and cyber bullying. Every form of harassment, abuse and exploitation have long lasting effects on children's life.

Bail under POCSO Act offences have to be considered under Section 439 CrPC and in accordance with the settled parameters of grant of bail which include nature and gravity of the offences, and the likelihood of an accused having committed the offence. The possibility of the accused reoffending, influencing witnesses and tampering with evidence or being a flight risk are also relevant factors to be considered while deciding a bail application.<sup>7</sup>

The aim of a study of Kaur (2019)<sup>8</sup> is to explore the crime rate against minors in Delhi and to observe the causes associated with delayed reporting. The significance is given on the cases reported rapes and POCSO Act. The victims in these studies are in the unmarried, predominantly teenagers, having very less societal and literacy rate. Participation of Juvenile offender in doing rape is quite high.

<sup>2</sup> Vikas Choudhry ,Radhika Dayal, "Child sexual abuse in India", Plus One Journal, Oct 9, 2018

<sup>3</sup> Sharadha K, "The other side of sexual abuse: More boys victims", Indian Express, October 12, 2013.

<sup>4</sup> S. Goel, Is the POCSO Act Bailable? IJLM & H, 2021

<sup>5</sup> CP No.3000/2020

<sup>6</sup> Bajpai Asha, "Child Rights in India - Law, Policy and Practice", OUP India, 2017

<sup>7</sup> India Legal Drive, Allahabad High Court grants bail to POCSO accused, February 15, 2023

<sup>8</sup> Suminder Kaur, "Recent trends in child rape crisis in Delhi, Forensic Science International", Nov 2019

## FINDINGS AND DISCUSSION

### POCSO Act and its Scope

Gender neutral: POCSO Act recognize that a boy can be victim of sexual abuse as well. It defines children as someone under the age of 18.

More the scope of reporting sexual offence and rapes against minors- It developed the definitions of sexual assaults to comprise non penetrative sexual assaults as well as aggravated penetrative sexual assaults (S.3 to 10).

It comprised penalization for individuals in position of trust of authority such as public servants, staffs of educational institution, police officials, etc.

Recognize sexual harassments of minors: It comprises touch, and also stalk, make children exposes themselves or exposing themselves to children, etc.

Stringent punishments: It specially lays down punishment for exposing children to, or utilizing them to make child sexual abuses materials.

### Constitutional Provisions

The constitution of India 15(3), 39(e), 39(f), 45 will assist people to know the law and respective provision to tackle the case of child abuse and minor rapes.

Art 15(3) deals with the state would not distinguish any person, they can make special provision only for child to protect their interest. Despite this Act, Indian child is still not getting their due esteem and self-respect either at home or at outside.

Art 39(f) points out that child is provided chances and facility to grow in better way and in situations of liberty and self-esteem and that babyhood is safeguarded against misuse and against ethical and material neglect.

Article 45 has prepared provisions for free education for every child. This will make them conscious about sexual exploitation and abuse by the perpetrators.

## BAIL UNDER POCSO ACT

Safeguarding the interest of children who have been the victims of sexual offenses were the basic purpose of sanctioning POCSO. Yes, all accused persons deserve fair and unbiased hearing as well as the capability to requesting bail. However, all accused persons can't be offered default bail mere because investigations are not finished in a particular period or S.35 of POCSO is not followed. Bail might be permitted if there us further justification, like deficit of enough evidences, the nature and seriousness of the offence, the severity of the punishment, etc. On the other hand, the accused person must not be permitted to request bail only as the investigation could not be finished within a time period. In POCSO, default bails must not be permitted automatically as it is under CrPC. The court must have the discretion to concern the situations behind the delays in the investigation and decide whether or not the case might be made for default bail.<sup>9</sup>

The court awarding bail has to regard as, amongst other situations, the aspects like (i) the character of charge and strictness of punishment in case of convictions and the nature of assisting evidences; (ii) logical apprehension of tampering with the witnesses or apprehensions of threats to the complainants; and (iii) prima facie happiness of the court in help of the accusation.

### Loopholes

POCSO Act doesn't leave any chance of permission provided by individuals under 18. It meant that if 17-years old boys or girls had 19 years old sexual partner, the partners will be accountable to be booked as per the provisos of POCSO Act. It doesn't give any lucidity on what occurs when two children below 18 years take on in any type of sexual activities.

The other issue confronted by victim is prove the age. Since the POCSO Act is unspoken on what proofs are to be concerned for determining the age of children, the provision of Rule12 of the JJ Act have been read by Courts as employing to minors as well. It recognizes only birth certificates, the school certificates of the children, or the matriculation certificates. There requires to be an appropriate provision in the POCSO Act that lay down what document for age proof of children, and whether the advantage of the doubt must be provided to the children if the ossification tests can't give a correct evaluation<sup>10</sup>.

The minor victims are entitled to provisional compensation to meet their instant necessities. Though, it is essential for all stakeholders to know that interim compensation shouldn't be restrictively interpreted to mean only their medical requirements. It comprises all needs of the children essential for rehabilitation and resettlement.

As per S.33.(2) (POCSO Act), Public Prosecutors whereas recording the examination-in-chief, cross-examinations or re-examinations of children, must first converse the question to the Special Courts and then

<sup>9</sup> S. Goel, Is the POCSO Act Bailable? IJLM & H, 2021

<sup>10</sup> Manuraj, Expanding the scope of POCSO, The Hindu, May 25, 2021

those question must be put to the children. The children must also be provided frequent break among questions.

### **JUDICIAL APPROACH**

In Ravi Kumar v. Union Territory of J&K<sup>11</sup> case, the High Court granted bail to an accused person as per POCSO Act whereas stated that the victim's denial to confirm in court was adequate to permit bail. This isn't a case of the prosecution that trials are being delayed due to the behavior of the accused person but it is a case where the victims are avoiding stepping into the witness box. This behavior of the victim is enough to give the right the petitioner to concession of bail.

Nishu vs Commissioner of Police Delhi<sup>12</sup>.

In this case, the petitions were filed by girl child who was frequently raped by group of people, the POCSO provision has reportedly still not been summoned against the accused.

AG for India vs Satish<sup>13</sup>

The Court had ruled in this case that grab a minor girl's breast without making "skin-to-skin contact" comprised molestation under the POCSO Act, 2021. The AG of India, the NCW, and the State of Maharashtra filed appeal against the High Court controversial decisions.

In State vs Aas Mohammed<sup>14</sup> case it can view that the Court is legalizing children marriage rather than penalizing the accused for doing sexual offences which is entirely against the aspect of POCSO.

In Suraj Paithankar vs. State of Maharashtra<sup>15</sup> wherein it was apprehended that "the provision of the POCSO Act will succeed over the SC/ST Act" and held that whenever a crime in POCSO Act is alleged, with the provision of the SC/ST Act, the accused is entitled to take recourse to the procedures contemplated under the POCSO Act for bail.

In Hanumatha Mogaveera v. State Of Karnataka<sup>16</sup> case the Court exactly held that only noncompliance with provision of Section 35 can't be the view for default bail. This Section offers that where there are unavoidable delays, the Court should give causes for it. Therefore, the statutes itself envisage that there might be delays in compliance in some cases.

In Mohiddin Vs. State of Karnataka<sup>17</sup>, case where counsels for the accused person contend for bail as per evidences of the victim wasn't completed in the mentioned on month and S.35(1) wasn't duly adhered to. The accused person requested for default bail.

But, it was rejected the bail application and held that although the evidences of the victim child wasn't recorded in a period of one month but only on that ground it can't be said that the whole case of the prosecutions are to be disbelieved or it is to be brushed aside and bail order is to be permitted..

### **CONCLUSION AND RECOMMENDATIONS**

To sum up, POCSO has absolutely been a useful instrument by which there has been substantial breakdown in the sexual abuses and rapes against minors, but still there is a long way to go to totally get rid of the ugly crime against minors. There are still various drawbacks which the act requires to identify and the amendment introduced in 2019 POCSO Bill is an admirable footstep.

These legislations would be pointless if there is not appropriate dissemination of information and individuals are not conscious about their right. In backward people are not aware about the POCSO Act and there by meeting particular demand of the situations.

Bail is a rule and jail is exceptions. Supreme Court would grant bail as long as it is possible. Unless the offences are severe or there is a threat in regards to the security of witness in the court bail will be awarded. Earlier normally the bail lea utilized to be cancelled but now the trends are altering. In lower court like the trial courts, session court, and magistrate bail plea employed to be normally rejected. But presently it is changing and court is supporting for permitting bail.

There is a vital requirement to reforms and revises the laws to account for different developments like historical reporting of sexual abuses and rapes against minors. The government should prepare proper guideline to direct effectual and purposeful prosecution in cases that aren't included by the POCSO.

A child should be concerned as a citizen with privileges ensured to them under the Indian Constitution, and the national and international legislations. The State infrastructures and service for a child require be enhancing and improving. The major importance of the Conventions on the Right of the Children and other

---

<sup>11</sup> Bail App No. 47/2023

<sup>12</sup> 2014 (85) ACC 962.

<sup>13</sup> AG for India vs Satish CRIMINAL APPEAL NO.1411 OF 2021

<sup>14</sup> State v. Aas Mohammad, SC No. 78/2013

<sup>15</sup> Bail Application No. 817/2020

<sup>16</sup> 2021 SCC OnLine Kar 12300

<sup>17</sup> 2017 CrI. P No. 5923/2017

international instrument ratified by India is that it represents commitments to improving the condition of children in India. Therefore, they can be utilized by public advocates to force the government to take necessary steps on key issues of children. It is currently established situation that presumptions as per POCSO Act, get triggered only after the commencement of trials also that it has no bearing on the permission of bail. But a bail request moved after the trials have commenced, then the contour of Section 29 will play an important role in permission of bail.

#### REFERENES

1. Debarati Halder, *Child Sexual Abuse and Protection Laws in India*, Sage Publications, 2018
2. S. Goel, *Is the POCSO Act Bailable?* IJLM & H, 2021
3. Bajpai Asha, *Child Rights in India - Law, Policy and Practice*, OUP India, 2017
4. Vikas Choudhry, Radhika Dayal, *Child sexual abuse in India: A systematic review*, Plos One Journal, Oct 9, 2018
5. Bajpai Asha, *Child Rights in India - Law, Policy and Practice*, OUP India, 2017
6. Sharadha Kalyanam, "The other side of sexual abuse: More boys victims", *Indian Express*, Bangalore, Oct. 12, 2013.
7. Suminder Kaur, Simarpreet Kaur Kajal Varshney, *Recent trends in child rape crisis in Delhi (India): A forensic overview*, *Forensic Science International*, Nov 2019
8. Manuraj, *Expanding the scope of POCSO*, *The Hindu*, May 25, 2021
9. Rajput, Apeksha, *A Critique on Crimes against Children in India*, *International Journal of Law Management & Humanities*, 2021
10. *India Legal Drive*, Allahabad High Court grants bail to POCSO accused, February 15, 2023
11. A Jain, *Child survivor needn't be at bail hearings*, <https://theprint.in/india/child-survivor-neednt-be-at-bail-hearings-delhi-hc-issues-slew-of-guidelines-for-pocso-cases/1323388/>
12. <https://www.hindustantimes.com/cities/others/hc-issues-guidelines-for-bail-pleas-under-pocso-act-101626288600661.html>
13. <https://www.barandbench.com/news/supreme-court-grants-anticipatory-bail-to-accused-in-pocso-case>